No. 79-1904

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

OPENING BRIEF OF KENAI PENINSULA BOROUGH

CHARLES K. CRANSTON
Attorney of Record
CRANSTON, WALTERS & DAHL
310 K Street
Anchorage, Alaska 99501
(907) 276-1994

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED FOR REVIEW

Are revenues derived from federal oil and gas leases covering the Kenai National Moose Range, Alaska (a reserved land Federal Wildlife Refuge) to be distributed pursuant to 16 U.S.C. § 715s (The Wildlife Refuge Revenue Sharing Act), which allocates 25 per cent of such revenue to the county in which the refuge is located (The Kenai Peninsula Borough) and 75 per cent to the Federal Government for management of the wildlife refuge systems; or, are such revenues to be distributed pursuant to 30 U.S.C. § 191, (The Mineral Leasing Act of 1920), which allocates 90 per cent of such revenues to the State of Alaska and 10 per cent to the United States Treasury?*

---

* Additional parties involved are: Cecil D. Andrus, Secretary of the Interior, D. William Miller, Secretary of the Treasury and the Comptroller General of the United States, all of whom are petitioners in 79-1890 which has been consolidated with this case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	(i)
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTIONAL STATEMENT	2
STATUTES INVOLVED	2
STATEMENT OF THE CASE	9
A. Proceedings in Court Below	9
B. Statement of Facts	11
SUMMARY OF ARGUMENT	13
ARGUMENT	16
I. THERE IS AN IRRECONCILABLE CONFLICT BETWEEN 30 U.S.C. SECTIONS 181-191, THE MINERAL LEASING ACT, AND 16 U.S.C. SECTION 715s	16
II. REVENUE FROM FEDERAL OIL AND GAS LEASES UPON THE KENAI NATIONAL MOOSE RANGE, ALASKA, MUST BE DISTRIBUTED PURSUANT TO 16 U.S.C. § 715s AS AMENDED IN 1964	19
A. The Meaning of 16 U.S.C. § 715s is Clear and Unambiguous	19
B. The Legislative History of 16 U.S.C. § 715s as Amended in 1964, Even if Considered, Does Not Distort the Plain Meaning of the Statute	23

PREVIOUS PAGE WAS BLANK

TABLE OF CONTENTS—Continued

Page

C. 16 U.S.C. § 715s is Consistent With Congressional Concern Over Wildlife Refuges 26

D. 16 U.S.C. § 715s as Amended in 1964 Impliedly Repealed Those Inconsistent Provision of 30 U.S.C. § 191, the Mineral Leasing Act of 1920 29

III. THE OPINIONS OF THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR AND OF THE COMPTROLLER GENERAL ARE ENTITLED TO GREAT WEIGHT 30

CONCLUSION 31

TABLE OF AUTHORITIES

CASES Page

Armstrong Paint and Varnish Works v. *Nu-Enamel Corp.*, 305 U.S. 315, 83 L. Ed. 195 (1939) 20, 21
Binns v. *Lawrence*, 12 How. 9, 13 L. Ed. 871 (1851) 20
Browder v. *U.S.*, 312 U.S. 335, 85 L. Ed. 862 (1941) 20
Bulger v. *McCourt*, 179 Neb. 316, 138 N.W. 2d. 18 (1965) 20
Caminetti v. *U.S.*, 242 U.S. 470, 485 (1917) 20, 21
Calder v. *Bull*, 3 Dall. 386, 1 L. Ed. 648 (1798) 20
Cecil D. Andrus et al. v. *Alaska*, No. 79-1890 2
Cox v. *Lott* (*State Tonnage Tax Cases*) 12 Wall. 204, 20 L. Ed. 370 (1871) 20
Crain v. *Pure Oil Co.*, 25 F.2d 824 (10th Cir. 1928) 20
District of Columbia v. *Hutton*, 143 U.S. 18, 26-27, 36 L. Ed. 60, 62 (1892) 29
Humphreys-Mexia Co. v. *Grammon*, 113 Tex. 247, 254 S.W. 296 (1923) 20
Kenai Peninsula Borough v. *Alaska*, 611 F.2d 1210 (9th Cir. 1980) (Appendix B-1 through B-10, Kenai Peninsula Borough Petition for Writ of Certiorari) 1
Kenai Peninsula Borough v. *Andrus*, 436 F. Supp. 288 (D. Alaska, 1977). (Appendix A-1 through A-9, Kenai Peninsula Borough's Petition for Writ of Certiorari) 1
Kokoszka v. *Bellford*, 417 U.S. 642, 560, 41 L. Ed. 2d. 374-381 (1974) 29
Maritime Board v. *Isbrandtsen Co.*, 356 U.S. 481, 499, 2 L.Ed. 2d 926, 938 (1958) 30
Reiter v. *Sonotone Corp.*, 442 U.S. 330, 60 L. Ed. 2d 931 (1979) 19, 20
Shamrock Oil and Gas Corp. v. *Sheets*, 313 U.S. 100, 106-107, 85 L. Ed. 1214, 1218 (1941) 26
Shea v. *Vialpando*, 416 U.S. 251, 262, 40 L. Ed. 2d 120, 120 (1974) 30

TABLE OF AUTHORITIES—Continued

	Page
Train v. *Colorado Public Interest Resources Group*, 426 U.S. 1, 48 L. Ed. 2d 434 (1976)	22
Udall v. *Tallman*, 380 U.S. 1 (1965)	11
Ullman v. *United States*, 350 U.S. 422, 433, 100 L. Ed. 511, 522 (1956)	26
United States v. *Atlantic Refining Co.*, 360 U.S. 19, 3 L. Ed. 2d 1054 (1959)	30
United States v. *American Trucking Associations*, 310 U.S. 534, 84 L. Ed. 1345 (1940)	21, 22
United States v. *Henderson*, 11 Wall. 652, 657, 20 L. Ed. 235, 237 (1871)	29
United States v. *Shirey*, 359 U.S. 255, 3 L. Ed. 2d 789 (1959)	20
United States v. *Wiltberger*, 5 Wheat. 76, 95-96, 5 L. Ed. 37, 42 (1820)	23

STATUTES

16 U.S.C. § 715s	2, *passim*
16 U.S.C. § 715s(a)	15
16 U.S.C. § 715s(c)(1)	12, 13, 22, 25
16 U.S.C. § 715s(c)(2)	13, 22, 25
16 U.S.C. § 715s(e)	18
16 U.S.C. § 715s(g)(2)	11
16 U.S.C. § 715s(g)(3)	11
28 U.S.C. § 1254(1)	2
30 U.S.C. § 181	6, *passim*
30 U.S.C. § 191	7, *passim*
30 U.S.C. § 351 et seq.	24
30 U.S.C. § 355	8
43 U.S.C. §§ 1601-1624	13
Alaska Statehood Act of 1958, Pub. L. No. 85-508, 72 Stat. 339, Section 28(b)	9, 17
Clayton Act, 38 Stat. 731 Section 4	19
Federal Water Pollution Control Act, 86 Stat. 816	22
1920 Trademark Act	20
Motor Carrier Act 1935	21

TABLE OF AUTHORITIES—Continued

Page

Game Laws of May 25, 1900, 31 Stat. 187, 16 U.S.C. 701. See also 18 U.S.C. 41, et seq. 28
Game Birds' Eggs Act of June 3, 1902, 32 Stat. 285, 16 U.S.C. 702 28
Migratory Birds Act of March 4, 1913, 37 Stat. 847, 16 U.S.C. 673 28
Kansas Game Preserve Act of June 22, 1916, 39 Stat. 233, and March 10, 1928, 45 Stat. 300 28
Migratory Birds Treaty Act of July 3, 1918, 40 Stat. 755, 16 U.S.C. 703-711 28
Migratory Birds Protection Proclamation of July 31, 1918, 40 Stat. 1812 28
Ozark National Forest Game Refuge Act of February 28, 1925, 43 Stat. 1091, 16 U.S.C. 682 28
Ozark National Game Refuge Proclamation, April 26, 1926, 44 Stat. 2611 28
The Upper Mississippi Wild Life and Fish Refuge Act of June 7, 1924, 43 Stat. 650, 16 U.S.C. 721 *et seq.* 28
Fish Conservation Act of May 1, 1928, 45 Stat. 478 28
Fish and Game Preserve Act (Idaho), December 15, 1928, 45 Stat. 1022 28
Fish Culture Act, January 29, 1929, 45 Stat. 1142 28
Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. 715-715r 28
Migratory Bird Conservation Act of March 16, 1934, 48 Stat. 452, 16 U.S.C. 718-718H 28
Wildlife Conservation Act of May 19, 1948, 62 Stat. 240, 16 U.S.C. 667 B-667d 28
Fish Restoration and Management Projects Act of August 9, 1950, 64 Stat. 430, 16 U.S.C. 777 *et seq.* 29
Migratory Birds Conservation Act of July 30, 1956, 70 Stat. 722, 16 U.S.C. 718a *et seq.* 29
Fish and Wildlife Act of August 8, 1956, 70 Stat. 1119, 16 U.S.C. 742a *et seq.* 29

TABLE OF AUTHORITIES—Continued

LEGISLATIVE HISTORY Page

88th Congress, Second Session, House Report 1753 25

88th Congress, Second Session, Senate Report 1096 25

88th Congress, Second Session,

Hearings on H.R. 1127, ... 25, 26
H.R. 2393, ... 25, 26
H.R. 5996, ... 25, 26
H.R. 9030, ... 25, 26
H.R. 1008 ..... 25, 26

88th Congress, Second Session,

Hearings on S. 179, ... 25, 26
S. 1363, ... 25, 26
S. 1720, ... 25, 26
S. 2498 ..... 25, 26

OTHER AUTHORITY

Executive Order 8979, 6 Fed. Reg. 6471 11

IN THE

Supreme Court of the United States

OCTOBER TERM 1980

No. 79-1904

KENAI PENINSULA BOROUGH,
Petitioner

v.

STATE OF ALASKA, *et al.*,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

---

OPENING BRIEF OF KENAI PENINSULA BOROUGH

OPINIONS BELOW

Kenai Peninsula Borough v. *Andrus*, 436 F. Supp. 288 (D. Alaska, 1977). (Appendix A-1 through A-9, Kenai Peninsula Borough's Petition for Writ of Certiorari).

Kenai Peninsula Borough v. *Alaska*, 611 F. 2d 1210 (9th Cir. 1980) (Appendix B-1 through B-10, Kenai Peninsula Borough Petition for Writ of Certiorari).

JURISDICTIONAL STATEMENT

1. The judgment of the United States Court of Appeals for the Ninth Circuit was entered on February 5, 1980. There was no order for a rehearing.

2. By an order dated May 7, 1980 by Mr. Justice Rehnquist granted an extension of time to and including June 2, 1980 within which to petition for a writ of certiorari. The Kenai Peninsula Borough's Petition for Writ of Certiorari was filed on June 2, 1980. On October 6, 1980 the Supreme Court granted the petition for Writ of Certiorari as well as a similar petition in *Cecil D. Andrus et al.* v. *Alaska*, No. 79-1890. The two cases are consolidated.

3. This Court has jurisdiction to review the judgment entered by the United States Court of Appeals for the Ninth Circuit under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Title 16, United States Code. (Wildlife Refuge Revenue Sharing Act).

At the time of the filing of the complaint in this action on May 14, 1976, 16 U.S.C. § 715s provided in pertinent part:

> (a) Beginning with the next full fiscal year and for each fiscal year thereafter, all revenues received by the Secretary of the Interior from the sale or other disposition of aninals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other privileges, or from leases for public accommodations or facilities incidental to but not in conflict with the basic purposes for which those areas of the National Wildlife Refuge System were established, during each fiscal year in connection with the operation and management of those areas of the National Wildlife Service, shall be covered into

the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed. Amounts in the fund shall remain available until expended, and may be expended by the Secretary without further appropriation in the manner hereafter prescribed. The National Wildlife Refuge System (hereafter referred to as the "System") includes those lands and water administered by the Secretary as wildlife refuges, lands acquired or reserved for the protection and conservation of fish and wildlife that are listed pursuant to section 1533 of this title as endangered species or threatened species, wildlife ranges, game ranges, wildlife management areas, and waterfowl production areas established under any law, proclamation, Executive, or public land order.

Deduction of expenses

(b) The Secretary may pay from the fund any necessary expenses incurred by him in connection with the revenue-producing measures set forth in subsection (a) of this section.

Payments to counties

(c) The Secretary, at the end of each fiscal year, shall pay, out the net receipts in the fund (after payment of necessary expenses) for such fiscal year, which funds shall be expended solely for the benefit of public schools and roads as follows:

(1) to each county in which reserved public lands in an area of the System are situated, an amount equal to 25 per centum of the net receipts collected by the Secretary from such reserved public lands in that particular area of the System: Provided, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such public lands therein; and

(2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three-fourths of 1 per centum of the cost of the areas, exclusive of any improvements to such areas made subsequent to Federal acquisition, such cost to be adjusted to represent current values as determined by the Secretary for the first full fiscal year after enactment of this Act and as redetermined by him at five-year intervals thereafter, or (B) 25 per centum of the net receipts collected by the Secretary from such acquired lands in that particular area of the System within such counties, whichever is greater. The determinations by the Secretary under this subsection shall be accomplished in such manner as he shall consider to be equitable and in the public interest, and his determinations hereunder shall be final and conclusive.

16 U.S.C. § 715s was amended in 1976, in part, to read as follows:

Payments to counties

(c) (1) The Secretary shall pay out of the fund, for each fiscal year beginning with the fiscal year ending September 30, 1979, to each county in which is situated any fee area whichever of the following amounts is greater:

(A) An amount equal to the product of 75 cents multiplied by the total acreage of that portion of the fee area which is located within such county.

(B) An amount equal to three-fourths of 1 per centum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county.

(C) An amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a fee area is located in two or more counties, the amount of each such county is entitled to shall be the amount which bears to such 25 per centum the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(2) At the end of each fiscal year the Secretary shall pay out of the fund for such fiscal year to each county in which any reserve area is situated, an amount equal to 25 per centum of the net receipts collected by the Secretary in connection with the operation and management of such area during such fiscal year: Provided, That when any such area is situated in more than one county the distributive share to each county from the aforesaid receipts shall be proportional to its acreage of such reserved area.

Definitions

(g) As used in this section—

(1) The term "Secretary" means the Secretary of the Interior.

(2) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(3) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service.

(4) The term "Service" means the United States Fish and Wildlife Service.

(5) The term "county" means any county, parish, or organized or unorganized borough.

Administration of payments to local governments for entitlement lands; reserved areas as entitlement lands; payments as payments under specified provisions

(h) In administering sections 1601 and 1607 of Title 31, for fiscal years occurring after September 30, 1978—

(1) reserve areas shall be deemed to be entitlement lands for purposes of section 1606(a) of Title 31; and

(2) payments received by any unit of local government pursuant to subsection (c)(2) of this section shall be deemed to be payments under a provision of law specified in section 1604 of Title 31.

Title 30 United States Code
(Mineral Leasing Act of 1920)

30 U.S.C. § 181. Deposits of coal, phosphate, sodium, potassium, oil, oil shale, native asphalt, solid and semisolid bitumen, and bituminous rock (including oil-impregnated rock or sands from which oil is recoverable only by special treatment after the deposit is mined or quarried) or gas, and lands containing such deposits owned by the United States, including those in national forests, but excluding lands acquired under the Appalachian Forest Act, and those in incorporated cities, towns, and villages and in national parks and monuments, those acquired under other Acts subsequent to February 25, 1920, and lands within the naval petroleum and oil-shale reserves, except as hereinafter provided, shall be subject to disposition in the form and manner provided by this chapter to citizens of the United States, or to associations of such citizens, or to any corporation organized under the laws of the United States, or of any State of Territory thereof, or in the case of coal, oil, oil shale, or gas, to municipalities. Citizens of another country, the laws, customs, or regulations

of which deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own.

30 U.S.C. § 191. All money received from sales, bounses, royalties, and rentals of public lands under the provisions of this chapter shall be paid into the Treasury of the United States; 37½ per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the State within the boundaries of which the leased lands or deposits are or were located; said moneys to be be used by such State or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions, as the legislature of the State may direct; and, excepting those from Alaska, 52½ per centum thereof shall be paid into, reserved and appropriated, as a part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: Provided, That all moneys which may accrue to the United States under the provisions of this chapter from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter not otherwise disposed of by this section shall be credited to miscellaneous receipts.

30 U.S.C. § 191. Disposition of money received (1976 Amendments)

All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid

by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof; Provided, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.

30 U.S.C. § 355. (Portion of Mineral Leasing Act for Acquired Lands) provides in pertinent part:

All receipts derived from leases issued under the authority of this chapter shall be paid into the same funds or accounts in the Treasury and shall be distributed in the same manner as prescribed for other receipts from the lands affected by the lease, the intention of this provision being that this chapter shall

not affect the distribution of receipts pursuant to legislation applicable to such land * * *.

Alaska Statehood Act of 1958,
Pub. L. No. 85-508, 72 Stat. 339,

Section 28(b):

"Section 35 of the Act entitled 'an act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain', approved February 25, 1920, as amended (30 U.S.C. § 191), is hereby amended by inserting immediately before the colon proceeding the first proviso thereof the following: ', and of those from Alaska 52½ per centum thereof shall be paid to the State of Alaska for deposition by the legislature thereof.' "

STATEMENT OF THE CASE

A. Proceeding in Court Below

This case involves consolidated suits by the Kenai Peninsula Borough, an Alaska county type municipal corporation (hereinafter "Kenai"), and the State of Alaska (hereinafter "Alaska") against the Secretary of the Interior and other Federal officials for declaratory relief and writs of mandate (A. 8; 16). Kenai sought a declaratory judgment that revenue derived from Federal oil and gas leases covering the Kenai National Moose Range, a reserved land national wildlife refuge, be allocated pursuant to 16 U.S.C. § 715s (The Wildlife Refuge Revenue Sharing Act). Under that section Kenai would receive 25 per cent (25%) of such net revenue, the remaining 75 per cent (75%) would be paid to the United States Treasury to be expended for the management of the National Wildlife Refuge System.

Alaska sought a declaratory judgment that such revenue be distributed pursuant to 30 U.S.C. § 181, et seq.,

the Mineral Leasing Act of 1920 (A. 8). Under that act 90 per cent (90%) of the revenue would be distributed to the State and 10 per cent (10%) to the United States. Both Kenai and Alaska sought writs of mandate compelling the appropriate federal officials to distribute the revenue in a manner consistent with their respective statutory claims. In each suit the Secretary of the Interior sought a judgment declaring that the involved revenues be allocated pursuant to 16 U.S.C. § 715s. (A. 28).

The two separate actions were consolidated (A. 26) and after consolidation Kenai intervened in Alaska's suit and sought the same relief as in its original suit. (A. 35).

Ultimately all of the parties, Kenai, Alaska and the Federal defendants, filed motions for partial summary judgment. After briefing and oral argument, the United States District Court granted Alaska's motion for partial summary judgment.[1] Pursuant to that ruling judgment was entered in favor of Alaska on October 10, 1977. That judgment declared that the involved revenue be allocated between Alaska and the United States pursuant to 30 U.S.C. § s 181 et seq.

The Federal defendants and Kenai appealed the District Court Judgment to the Court of Appeals for the Ninth Circuit. By its judgment of February 5, 1980 the Court of Appeals affirmed the judgment of the District Court. (Kenai's Petition for Writ of Certoriari, Appendix B-2).

---

[1] The motions were for partial summary judgment only on the issue of which statutory method of allocation applied to the revenues in questions. Other issues concerning the reallocation of revenues already distributed were not involved.

B. Statement of Facts

This dispute centers on the meaning of 16 U.S.C. § 715s, as amended on August 30, 1964 by Pub. Law 88-523, 78 Stat. 701-702. The 1964 amendment to 16 U.S.C. § 715s was a revision of a Wildlife Refuge Revenue Sharing Act. As first enacted on June 15, 1935, 49 Stat. 383, the Act distributed seventy five percent of the net revenue derived from the sale of certain products of wildlife refuges to the county in which the refuge was located. The United States retained the remainder of the revenue. Proceeds from the sales of minerals were not specifically designated for distribution under the 1935 formula.

The 1964 amendment to 16 U.S.C. § 715s added the word "minerals" to the list of resources the revenue from which was to be distributed to counties under the Wildlife Revenue Sharing Act. In addition the 1964 amendment to 16 U.S.C. § 715s distinguished between revenue derived from reserved [2] land refuges and that derived from acquired [3] land refuges.

The Kenai National Moose Range is a reserved land wildlife refuge located wholly within the Kenai Peninsula Borough, Alaska. It was established on December 16, 1941, Executive Order 8979, 6 Fed. Reg. 6471 (R. 906). The refuge comprises of approximately 2 million acres, see *Udall* v. *Tallman*, 380 U.S. 1 (1965). Since 1959 revenue has been derived from Federal oil and gas leases on the Kenai National Moose Range. (R. 66-67; 229-230). From 1959 through 1976 approximately

---

[2] Reserved land means an area withdrawn from the public domain and reserved as a Wildlife Refuge, 16 U.S.C. § 715s (g)(3), as amended in 1976.

[3] Acquired land means land which is acquired in fee by the United States and then administered as a Wildlife Refuge, 16 U.S.C. § 715s (g)(2), as amended in 1976.

ninety percent of that revenue was distributed to the State of Alaska and ten percent to the United States (A. 60). These distributions have totaled approximately $57,239,586.03 (R. 949). Since 1976 the oil and gas lease revenues from the Kenai National Moose Range have been and are being held in a suspense account pending the resolution of this dispute (A. 27, 60).

In 1975 the Director of the United States Fish and Wildlife Service requested an opinion from the Solicitor of the Department of the Interior as to whether the 1964 amendment to 16 U.S.C. § 715s required that receipts from oil and gas leases on reserved land wildlife refuges be distributed pursuant to 16 U.S.C. § 715s or whether they be distributed pursuant to 30 U.S.C. § 181 et seq., the Mineral Leasing Act. The Solicitor concluded that oil and gas revenues must be distributed in accordance with the 1964 amendments to § 715s irrespective of whether the refuge involved was a reserved land or acquired land refuge (Opinion, Solicitor Department of the Interior, Appendix D, Petition of Cecil D. Andrus et al., for Writ of Certiorari.)

The Solicitor for the Department of the Interior requested the Comptroller General for an opinion as to whether he concurred in the solicitor's opinion referred to above. In opinion B-118678, dated July 29, 1975, (Appendix E, Petition of Cecil D. Andrus, et al., for Writ of Certiorari), the Comptroller General concluded:

> ". . . that Congress intended the disposition of receipts from minerals on wildlife refuges to be governed by 16 U.S.C. § 715s as amended. We note that to hold otherwise as the Solicitor's memorandum points out would be to deprive § 715s (c) (1) of Title 16, prescribing a specific scheme of distribution for revenues from refuges created by reservation, of any meaning."

The State of Alaska, through its then Attorney General, sought a modification of the Comptroller General's

opinion to reflect the States' position that oil and gas revenues from wildlife refuges on reserved lands be distributed according to the Mineral Leasing Act and not 16 U.S.C. § 715s (A. 94-103).

On June 11, 1976 the Comptroller General, upon reconsideration, affirmed his earlier decision (R. 211-221; Appendix F, Petition of Cecil D. Andrus et al for Writ of Certiorari). In his decision on reconsideration the Comptroller General stated in part:

> "the language of § 715s, as amended, compels a different conclusion [from that of Alaska]. It adds revenues from minerals to the fund established by subsection (a), and provides for distribution of net receipts in the fund, according to the formulas described in subsections (c) (1) and (c) (2), both to counties in which acquired refuges are situated and to those which reserved refuges are situated. There is no way to read this provision as excepting oil and gas revenues from the fund, but only to the extent they derive from refuges on reserved land, without doing violence to the plain meaning of the statute."

In addition the Comptroller General considered the arguments of Alaska that the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601-1624, compelled distribution pursuant to the Mineral Leasing Act. He found these arguments unpersuasive.

Since the parties were unable to agree upon a resolution of this dispute these suits followed.

SUMMARY OF ARGUMENT

1. There is an irreconcilable conflict between 30 U.S.C. §§ 181-191, the Mineral Leasing Act, and 16 U.S.C § 715s the Wildlife Refuge Revenue Sharing Act. Specific reference to the provisions of 30 U.S.C. § 191, the Mineral Leasing Act, and 16 U.S.C. § 715s, the Wild-

life Refuge Revenue Sharing Act discloses an irreconcilable conflict in their terms. The Mineral Leasing Act would require that ten percent of the net revenues derived from oil and gas leases on the Kenai National Moose Range be paid to the United States Treasury and ninety percent of said revenues to the State of Alaska. On the other hand, under 16 U.S.C. § 715s twenty five percent of the net revenues derived from oil and gas leases on the Kenai National Moose Range will be paid to the Kenai Peninsula Borough and seventy five percent of those net revenues to the United States Treasury. Since there is no way to reconcile the terms of those statutes, an irreconcilable conflict exists.

2. Revenue from Federal oil and gas leases upon the Kenai National Moose Range, Alaska, must be distributed pursuant to 16 U.S.C. § 715s as amended in 1964.

a. The meaning of 16 U.S.C. § 715s is clear and unambiguous. Reference to the terms of 16 U.S.C. § 715s discloses no ambiguity in its terms. There can be no doubt that the Statute requires that twenty five percent of the net revenues derived from oil and gas leases situated upon the Kenai National Moose Range, Alaska, must be paid to the county (borough) in which the refuge is situated and seventy five percent of such net revenue to the United States Treasury. This rule must apply whether the refuge involved is an acquired land refuge or a reserved land refuge.

Since there is no inconsistency in the language of the statute, none of the exceptions to the "plain meaning" rule of statutory interpretation applied by this Court in other cases is applicable here. That is to say application of the "plain meaning" rule to 16 U.S.C. § 715s does not lead to an absurd or futile result; nor does it lead to an unreasonable result at variance with the policy of the legislation as a whole.

b. The legislative history of 16 U.S.C. § 715s as amended in 1964, even if considered, does not distort

the plain meaning of the statute. There is nothing in that legislative history which supports the conclusion that net proceeds of mineral revenues from oil and gas leases on the Kenai National Moose Range should be allocated in a manner different from that required by the plain meaning of the statute. The fact that there is no specific reference in the legislative history as to the word "minerals" as that term appears in 16 U.S.C. § 715s (a) does not support a conclusion that the legislative history of the amendment requires allocation in a manner different from that specifically set forth in the act. In particular, there is nothing in the legislative history that supports a conclusion that mineral revenues derived from oil and gas leases on reserved land national wildlife refuges should be distributed pursuant to 30 U.S.C. § 191 and that the same revenues derived from acquired land refuges should be distributed pursuant to 16 U.S.C. § 715s.

c. 16 U.S.C. § 715s is consistent with congressional concern over wildlife refuges. The provisions contained in 16 U.S.C. § 715s which require that twenty five percent of the revenues from the sale of oil and gas leases situated on the Kenai National Moose Range be distributed to the Kenai Peninsula Borough and that seventy five percent of said revenue be distributed to the United States government is consistent with the objectives of that Act as well as other Acts affecting wildlife refuges. The payment of seventy five percent of said net proceeds to the special fund provided for in 16 U.S.C. § 715s satisfies the need to provide a source of revenue for refuge management and maintenance. In addition the payment of twenty five percent of said net revenue to the county in which the refuge is situated will compensate the county for tax revenue lost because of the public status of the land as well as for services it must provide incident to the industrial development carried on within its boundaries.

16 U.S.C. § 715s is not an isolated example of Congress' intent to legislate specifically with regard to wildlife refuges and wildlife management. To the contrary the statute is consistent with numerous other laws passed by Congress for the protection and management of wildlife refuges.

d. 16 U.S.C. § 715s as amended in 1964 impliedly repealed those inconsistent provisions of 30 U.S.C. § 191 the Mineral Leasing Act of 1920. To the extent that the terms of 30 U.S.C. § 191 are repugnant to 16 U.S.C. § 715s, as amended in 1964, the later statute, 16 U.S.C. § 715s, must prevail.

3. The opinions of the Solicitor of the Department of the Interior and of the Comptroller General are entitled to great weight. The rulings and opinions of those officials constitute informed judgments to which this Court may look for guidance. Furthermore those opinions should not be overruled except for compelling reasons, particularly when those opinions are consistent with the "plain meaning" rule.

ARGUMENT

I

THERE IS AN IRRECONCILABLE CONFLICT BETWEEN 30 U.S.C. SECTIONS 181-191, THE MINERAL LEASING ACT, AND 16 U.S.C. SECTION 715s

The principal issue to be decided in this suit is which statute governs the manner for allocating revenues derived from Federal oil and gas leases on the Kenai National Moose Range, Alaska.

Kenai and Federal Defendants claim that 16 U.S.C. § 715s, as amended in 1964,[4] requires distribution of

[4] Act of August 30, 1964, P. L. 88-523, 78 Stat. 701.

twenty five percent of those proceeds to Kenai and seventy five percent thereof to a special fund of the United States Treasury. Alaska, on the other hand, claims that the proceeds of those leases must be distributed pursuant to 30 U.S.C. § 181-191, The Mineral Leasing Act of 1920. Under that Act ten percent of such revenue is distributed to the Treasury of the United States and ninety percent thereof to Alaska.[5] It is clear, based upon the positions of the parties, that there is no way to reconcile the two statutes involved. This is apparent by reference to the pertinent provisions of each Act.

A. *16 U.S.C. § 715s, as amended in 1964, (Wildlife Refuge Revenue Sharing Act.)*

16 U.S.C. § 715s, as amended in 1964, provides in pertinent part:

> (a) ". . . all revenues received by the Secretary of the Interior from the sale or other disposition of animals, timber, hay, grass, or other products of the soil, minerals, shells, sand, or gravel, from other provilges, . . . during each fiscal year in connection with the operation and management of those areas of the National Wildlife Refuge System that are solely or primarily administered by him, through the United States, Fish and Wildlife Service, shall be covered into the United States Treasury and be reserved in a separate fund for disposition as hereafter prescribed . . .
>
> (b) ". . .
>
> (c) "The Secretary, at the end of each fiscal year, shall pay out of the net receipts in the fund . . . for such fiscal year, which funds shall be expended

---

[5] Section 28(b) of the Alaska Statehood Act, 72 Stat. 339, amended the Mineral Leasing Act, 30 U.S.C. § 191 so as to increase Alaska's share in the revenue payable under that act from thirty seven and one half percent to ninety percent.

solely for the benefit of public schools and roads as follows:

> (1) to each county in which reserve public lands in an area of the system are situated, an amount equal to Twenty five per centum of the net receipts . . .
>
> (2) to each county in which areas in the System are situated that have been acquired in fee by the United States, either (A) three fourths of one per centum of the cost of the areas, or, (B) twenty five per centum of the net receipts . . ."

16 U.S.C. § 715s, as amended, clearly and unambiguously allocates twenty five percent of the net mineral revenue of a reserved land wildlife refuge to the county in which the refuge is located. Seventy five percent thereof is paid into a special fund for the management of the fish and wildlife system, 16 U.S.C. § 715s (e).

B. *30 U.S.C. § 191 (The Mineral Leasing Act of 1920).*

30 U.S.C. § 191 read in pertinent part:

> "All money received from sales, bonuses, and royalties of the public lands under the provisions of this chapter . . . shall be paid into the Treasury of the United States . . .; . . . and of those from Alaska as soon as practicable after March 31 and September 30 of each year, ninety per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof; . . ."

The sole issue presented in these suits is to resolve the irreconcilable conflict between the two statutes by determining which statute applies to the oil and gas revenues derived from the Kenai Peninsula Moose Range.

II

REVENUE FROM FEDERAL OIL AND GAS LEASES UPON THE KENAI NATIONAL MOOSE RANGE, ALASKA, MUST BE DISTRIBUTED PURSUANT TO 16 U.S.C. § 715s AS AMENDED IN 1964

We have shown above, that 16 U.S.C. § 715s, as amended in 1964, when carefully read, by its own terms unambiguously requires allocation of twenty five percent of the net oil and gas revenue to the county in which the reserved land refuge is located. There are several reasons which compel this interpretation of the statute.

A. The Meaning of 16 U.S.C. § 715s is Clear and Unambiguous

These cases present a classic opportunity to invoke the basic rule of statutory construction most recently applied by this court in *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 60 L. Ed. 2d. 931 (1979). This Court said:

> "As is true in every case involving the construction of a statute, our starting point must be the language employed by Congress." (442 U.S. at p. 337).

A careful reading of the relevant portions of 16 U.S.C. § 715s can lead only to the conclusion that there is no ambiguity as to the manner in which oil and gas revenues from reserved land wildlife refuges are to be distributed. Twenty five percent thereof is to go to the county in which the refuge is situated and seventy five percent thereof to the Federal Fish and Wildlife Fund.

In *Reiter* v. *Sonotone Corp.*, *supra*, the Court of Appeals contrued the term "business or property" in section 4 of the Clayton Act, 38 Stat. 731, to refer only to business property. This Court reversed, stating that:

> "In construing a statute we are obliged to give effect, if possible to every word Congress used." (442 U.S. at p. 339).

Applying that standard to this case, the word "minerals" in 16 U.S.C. § 715s (a) must be interpreted so as to include oil and gas.[6] Beyond that, there is nothing in the words used by Congress in the statute which suggests that the term "mineral" refers only to mineral revenues from acquired land refuges and not reserved land refuges. Such an interpretation results in the type of strained construction of the statute criticized by this Court in *Reiter* v. *Sonotone Corp., supra.* Nevertheless, the decision of each court below is based on such a judicially created restrictive application of the term "minerals". Those decisions were clearly erroneous.

The principles of statutory construction relied on in *Sonotone* are the most recent application of the "plain meaning" rule recognized by this Court from its earliest days, *Calder* v. *Bull*, 3 Dal. 386, 1. L. Ed. 648 (1798), and applied in numerous decisions since then.[7]

Nevertheless this Court has recognized exceptions to the application of the "plain meaning" rule. Thus, if the application of the "plain meaning" rule will lead to an absurd or futile result, the Court will look beyond the specific language of the act to ascertain its meaning, *Armstrong Paint and Varnish Works* v. *Nu-Enamel Corp.*, 305 U.S., 315, 83 L. Ed. 195 (1939).[8] The appli-

---

[6] The term "minerals" has been universally construed to include oil and gas, *Crain* v. *Pure Oil Co.*, 25 F. 2d. 824 (10th Cir. 1928), *Humphreys-Mexia Co.* v. *Grammon*, 113 Tex. 247, 254 S. W. 296 (1923), *Bulger* v. *McCourt*, 179 Neb. 316, 138 N. W. 2d 18 (1965).

[7] For example, see *Binns* v. *Lawrence*, 12 How. 9, 13 L. Ed. 871 (1851), *Cox* v. *Lott (State Tonnage Tax Cases)* 12 Wall. 204, 20 L. Ed. 370 (1871), *Caminetti* v. *United States*, 242 U.S. 470, 61 L. Ed. 442 (1917), *Browder* v. *United States*, 312 U.S. 335, 85 L. Ed. 862 (1941), *United States* v. *Shirey*, 359 U.S. 255, 3 L. Ed. 2d 789 (1959).

[8] In *Armstrong* the Court interpreted the 1920 Trademark Act so as to permit registration of descriptive word trademarks, con-

cation of the "plain meaning" rule to 16 U.S.C. § 715s does not lead to an absurd or futile result. Clearly the allocation of twenty five percent of the mineral revenue to the county in which a reserved land wildlife refuge is located is reasonable, particularly when a county having acquired land may be the recipient of such revenue.[9]

A second exception to the "plain meaning" rule applies when a literal interpretation of the statute would produce an unreasonable result, at variance with the policy of the legislation as a whole, *United States* v. *American Trucking Associations*, 310 U.S. 534, 84 L. Ed. 1345 (1940). However, an unforeseen result is not the type of result to which this exception to the "plain meaning" rule applies, *Armstrong Paint and Varnish Works* v. *Nu-Enamel Corp.*, *supra*, at 333 (1939), *Caminetti* v. *U.S.*, 242 U.S. 470, 485 (1917). *U.S.* v. *American Trucking Associations*, *supra*, is a striking example of the type of case in which the unreasonable result exception applies. In that case the Interstate Commerce Commision had the authority to set the maximum hours of service of employees of common and contract carriers. This Court was faced with the issue of whether the term "employee" in the Motor Carrier Act of 1935 related only to those employees whose activities affected the safety of operations, or whether the term referred to all employees of a common and contract carrier by motor vehicle. The Court recognized that the term "employee" was not defined in the Act. In addition the Court recognized that in other Acts Congress gave the term both broad and narrow meanings. The same was found to be true in Court decisions where the term had no definite content,

---

cluding that the contrary interpretation would render the act meaningless.

[9] For many years Plaquemines Parish, Louisiana, has received substantial oil and gas mineral revenue from the Delta National Wildlife Refuge, an acquired land refuge (R. 362-366).

U.S. v. *American Trucking Association, supra,* fn. 29 at p. 545. Thus in order to ascertain the meaning of the term "Employee" as used in the Act, this Court concluded that it must review the legislative history of the Motor Carrier Act. After reviewing that history it was clear that Congress' intent was that the Act should apply only to those employees whose activities affected safety. Thus this Court interpreted the term "employee" in that context.

In the present case, no such problem exists. Unlike the term "employee" in the *American Trucking Asociations* case which this Court found to have no fixed and definite meaning, the word "minerals" does. As we have shown at page 27, *supra,* the term "minerals" definitely includes oil and gas. Moreover, the term "net receipts" as used in 16 U.S.C. § 715s (c) (1), refers to those receipts which are collected from the reserved public lands in the wildlife refuge system. The sources of those receipts are described in subparagraph (a) and include revenues from the sale of minerals. Moreover, it is significant that subsection (c) (2) (B) uses exactly the same structure in providing for the distribution of receipts collected from acquired lands. In short, there is nothing in 16 U.S.C. § 715s which requires interpretation of either the term "minerals" or the term "net receipts". Thus, this case cannot be compared with the *American Trucking Associations* case where word "employees" had no fixed and definite meaning.

Furthermore, there is nothing in 16 U.S.C. § 715s which can support two different definitions of the same word or words ("minerals" or "net receipts") as was done by the Courts below.[10]

---

[10] In *Train* v. *Colorado Public Interest Resources Group,* 426 U.S. 1, 48 L. Ed. 2d. 434 (1976) this Court held that the term "pollutant" as used in Federal Water Pollution Control Act, as

Thus considering all the criteria advanced by this Court which might justify a departure from the "plain meaning" rule it is apparent that none applies in this case. As to this case, Chief Justice Marshall's admonition, rendered over a century ago in *United States* v. *Wiltberger*, 5 Wheat. 76, 95-96, 5 L. Ed. 37, 42 (1820), still applies:

> "The intention of the legislature is to be collected from the words they employ. Where there is no ambiguity in the words, there is no room for construction. The case must be a strong one indeed, which would justify a Court in departing from the plain meaning of words, especially in a penal act, in search of an intention which the words themselves did not suggest."

B. The Legislative History of 16 U.S.C. §715s as Amended in 1964, Even if Considered, Does Not Distort the Plain Meaning of the Statute

We have shown in the foregoing portion of our argument that notwithstanding certain exceptions employed by this Court, the application of the "plain meaning" rule is appropriate in interpreting 16 U.S.C. § 715s. Application of that rule requires that the mineral revenue of the Kenai National Moose Range be allocated according to the twenty five percent—seventy five percent formula of the statute.

---

amended in 1972, 86 Stat. 816, did not include radioactive materials which were covered by the Atomic Energy Act. This conclusion was reached because the legislative history of the FWPCA specifically stated that "pollutant" did not include material encompassed in the Atomic Energy Act. Thus *Train* suggests another exception to the "plain meaning rule", based on an explicit legislative history which speaks with force on the question. We will demonstrate in a following portion of our argument that this exception does not apply in this case.

Even if the legislative history of the 1964 amendment is considered, the result is the same. 16 U.S.C. § 715s was first enacted on June 15, 1935, as section 401 of the Act of June 15, 1935, 49 Stat. 383. As first enacted the statute allocated wildlife refuge revenues in a manner similar to that of the present statute, namely twenty five percent thereof to counties and seventy five percent thereof to the United States Treasury. The original statute differed from the current version 16 U.S.C. § 715s in that minerals were not specifically enumerated among those products the revenues from which were to be distributed under the Act.[11] The original system of revenue distribution was possibly altered, in part, by the enactment on August 7, 1947 of the Mineral Leasing Act for Acquired Lands, 61 Stat. 907, 30 U.S.C. § 351 *et seq.* That Act required that mineral revenues from acquired land refuges be allocated as provided in Section 401 of the Act of June 15, 1935; namely, twenty five percent thereof to the counties and seventy five percent to the United States Treasury.

The 1964 amendment to 16 U.S.C. § 715s, Act of August 30, 1964 P.L. 88-523, 78 Stat. 701, by its explicit terms altered the statutory method described above with respect to the distribution of revenue derived from oil and gas leases on reserved land wildlife refuges. Insofar as this litigation is concerned those provisions can be summarized as follows:

1. The word "minerals" was specifically added to the catalog of products, the revenues from the sale of which are to be distributed under 16 U.S.C. § 715s.

---

[11] Nevertheless, on August 5, 1946, Felix S. Cohen, Acting Solicitor, Department of the Interior, concluded that Section 401 of the Act of June 15, 1935 constituted independent authority for granting oil and gas leases on a wildlife refuge, and that revenue therefrom should be distributed pursuant to Section 401 of that Act (A. 68-72).

2. Revenue from reserved land wildlife refuges was specifically made subject to distribution under 16 U.S.C. § 715s(c) (1). Twenty five percent thereof is to be paid to the county in which the refuges is situated.

3. Revenue from acquired land wildlife refuges was specifically made subject to distribution under 16 U.S.C. § 715s(c) (2). In case of an acquired land refuge, twenty five percent of the revenue from the refuge or three fourths of one percent of the cost of the acquisition of the land is to be paid to the county where the land is located.

A review of the legislative history of the 1964 amendments to 16 U.S.C. § 715s discloses that a significant concern of Congress in adopting the amendment was to provide a means for compensating a county whose land might be acquired for a wildlife refuge.[12] However the affected counties were not unaware of the fact that the term "minerals" was added to the list of refuge products to which the amendment would apply.[13] In addition Congress had before it numerous bills from which to choose, some of which omitted any reference to "minerals" [14]

---

[12] See 88th Congress, Second Session, House Report 1753 (R. 590); 88th Congress, Second Session, Senate Report 1096 (R. 614); 88th Congress, Second Session, Hearings on H. R. 1127, H. R. 2393, H. R. 5996, H. R. 9030, H. R. 1008 (R. 649); 88th Congress, Second Session, Hearings on S. 179, S. 1363, S. 1720, S. 2498 (R. 772).

[13] See memorandum dated February 20, 1964 from the Assistant to the Secretary, and legislative counsel to the Secretary of the Interior. In response to a request by the National Association of counties concerning the revenue sharing formula, the legislative counsel stated:

> "Effect: On public lands-none. S. 1363 provides for the payment of 25 per cent of revenue, including timber and *mineral* receipts, as under present law." (R. 588). (Emphasis supplied).

[14] 87th Congress, Second Session: S. 2138, 2678, 2770, 2927, 3201 (R. 423-431); H. R. 12144, 12143, 11535, 11525, 10714 (R. 481-487) 88th Congress, Second Session: S. 1720 (R. 780).

and some of which refered to "minerals."[15] Presumably when Congress adopted the version of the various proposals that contained the term "minerals" it was not unaware of other proposed legislation which omitted that term, nor was it unaware of the significance of the term "minerals", cf. *Shamrock Oil and Gas Corp.* v. *Sheets*, 313 U.S. 100, 106-107, 85 L. Ed. 1214, 1218 (1941). Certainly there is nothing in the legislative history of the amendment which demonstrates a congressional intent different from that exhibited by the words of the statute. Thus, even if this Court chooses to consider the legislative history of the 1964 amendment to 16 U.S.C. § 715s, the conclusion as to the application of that statute to this case cannot differ from the conclusion obtained by application of "plain meaning" rule. The statement of this Court in *Ullman* v. *United States*, 350 U.S. 422, 433, 100 L. Ed. 511, 522 (1956), applies with equal vigor here:

> "The most that can be said for the legislative history is that it is on the whole inconclusive. Certainly, it contains nothing that requires the court to reject the construction which the statutory language so clearly requires."

C. 16 U.S.C. § 715s is Consistent With Congressional Concern Over Wildlife Refuges

Since the enactment of 16 U.S.C. § 715s on June 15, 1935, Congress has shown a consistent concern over the administration of wildlife refuges and the distribution of revenue derived from those refuges. The 1964 amendment to 16 U.S.C. § 715s was the expression of a need to provide a source of revenue for the maintenance and protection of the refuges in light of their increasing com-

---

[15] 88th Congress, Second Session: H. R. 2393, 1004, 1127, 9030, 5996, 11008 (R. 654-659); S. 179, 1363, 2498 (R. 777-782).

mercial use. This need existed irrespective of whether the refuges were on reserved or acquired lands.

As early as 1954 the incompatibility of oil and gas operations and the management of an area as a wildlife refuge was recognized (R. 294). The concern of the Fish and Wildlife Service over oil and gas development on the Kenai National Moose Range resulted in its classification as to areas that would be open and closed to oil development (R. 930-931). In addition, by regulation, the Fish and Wildlife Service was given sole and complete jurisdiction over refuge lands (R. 939), and any lessee was subject to certain stipulations applicable to the land (R. 943-947).

All of this demonstrates that when Congress subjected oil and gas revenue from reserved land refuges to the terms of 16 U.S.C. § 715s, as amended in 1964, it was not operating in ignorance or a vacuum. Oil and gas operations on refuges were then a fact and only permitted under special conditions. In light of the special problems raised by oil and gas operations on wildlife refuges, the need to provide a source of revenue for refuge management and maintenance was apparent. The solution reached by Congress was one clearly consistent with meeting the problems posed by oil and gas operations on refuges. First, seventy five percent of the revenue from both acquired and reserved land refuges would be paid into the Fish and Wildlife Fund. Thus the amount paid into the fund would bear some relation to the extent of industrial development on the refuge. Second, twenty five percent would be paid to the county in which the refuge was located to compensate the county for tax revenue lost because of the public status of the land as well as for services which it must provide incident to the industrial development. In this case the literal interpretation of 16 U.S.C. § 715s is entirely consistent with the Act's objectives. Any other result, and

in particular the result sought by the State of Alaska, is inconsistent with the establishment of a program to provide for the continuing maintenance and management of the wildlife refuge system and for meeting the fiscal needs of the counties in which the system is located,[16]

---

[16] 16 U.S.C. 715s. is not an isolated example of Congress' intent to legislate specifically with respect to wildlife refuges and wildlife management. See for example:

1. Game Laws of May 25, 1900, 31 Stat. 187, 16 U.S.C. 701. See also 18 U.S.C. 41, et seq.

2. Game Birds' Eggs Act of June 3, 1902, 32 Stat. 285, 16 U.S.C. 702.

3. Migratory Birds Act of March 4, 1913, 37 Stat. 847, 16 U.S.C. 673.

4. Kansas Game Preserve Act of June 22, 1916, 39 Stat. 233, and March 10, 1928, 45 Stat. 300.

5. Migratory Birds Treaty Act of July 3, 1918, 40 Stat. 755, 16 U.S.C. 703-711.

6. Migratory Birds Protection Proclamation of July 31, 1918, 40 Stat. 1812.

7. Ozark National Forest Game Refuge Act of February 28, 1925, 43 Stat. 1091, 16 U.S.C. 682.

8. Ozark National Game Refuge Proclamation, April 26, 1926, 44 Stat. 2611.

9. The Upper Mississippi Wild Life and Fish Refuge Act of June 7, 1924, 43 Stat. 650, 16 U.S.C. 721 *et seq.*

10. Fish Conservation Act of May 1, 1928, 45 Stat. 478.

11. Fish and Game Preserve Act (Idaho), December 15, 1928, 45 Stat. 1022.

12. Fish Culture Act, January 29, 1929, 45 Stat. 1142.

13. Migratory Bird Conservation Act of February 18, 1929, 45 Stat. 1222, 16 U.S.C. 715-715r.

14. Migratory Bird Conservation Act of March 16, 1934, 48 Stat. 452, 16 U.S.C. 718-718H.

15. Wildlife Conservation Act of May 19, 1948, 62 Stat. 240, 16 U.S.C. 667 B-667d.

cf. *Kokoszka* v. *Bellford*, 417 U.S. 642, 650, 41 L. Ed. 2d., 374-381 (1974).

D. 16 U.S.C. § 715s as Amended in 1964 Impliedly Repealed Those Inconsistent Provisions of 30 U.S.C. § 191, the Mineral Leasing Act of 1920

We have shown in the foregoing portion of our argument that insofar as they relate to distribution of oil and gas revenues derived from reserved land wildlife refuges, the Mineral Leasing Act of 1920 and the Wildlife Refuge Revenue Sharing Act, as amended in 1964, are in irreconcilable conflict. It must of necessity follow that to the extent the terms of 30 U.S.C. § 191 are repugnant to 16 U.S.C. § 715s, as amended in 1964, the later statute, 16 U.S.C. § 715s, prevails, and is substituted for the repugnant provisions of 30 U.S.C. § 191, *District of Columbia* v. *Hutton*, 143 U.S. 18, 26-27, 36 L. Ed. 60, 62 (1892); *United States* v. *Henderson*, 11 Wall. 652, 657, 20 L. Ed. 235, 237, (1871). Similarly, where the later act embraces new provisions, not contained in the earlier act, the later act will operate as a repeal of the earlier, *District of Columbia* v. *Hutton*, *supra*. Clearly these rules apply in this case. Even though the Mineral Leasing Act of 1920 covers in general terms distributions of revenue from Federal lands, the later Wildlife Refuge Revenue Sharing Act, as amended in 1964, embraces new provisions which apply with particularity to wildlife refuges, both reserved and acquired. To that extent, the later act must constitute a repeal of the earlier. The conclusion must follow that, notwithstand-

---

16. Fish Restoration and Management Projects Act of August 9, 1950, 64 Stat. 430, 16 U.S.C. 777 *et seq.*

17. Migratory Birds Conservation Act of July 30, 1956, 70 Stat. 722, 16 U.S.C. 718a *et seq.*

18. Fish and Wildlife Act of August 8, 1956, 70 Stat. 1119, 16 U.S.C. 742a *et seq.*

ing the provisions of 30 U.S.C. § 181 et seq., the later and inconsistent provisions of 16 U.S.C. § 715s must govern the allocation of the revenues from the Kenai National Moose Range.

III

THE OPINIONS OF THE SOLICITOR OF THE DEPARTMENT OF THE INTERIOR AND OF THE COMPTROLLER GENERAL ARE ENTITLED TO GREAT WEIGHT

In an early part of our argument we have shown that 16 U.S.C. § 715s is clear and unambiguous. Hence we have shown that this Court should interpret this statute according to its "plain meaning". We have also shown that even if the legislative history of the statute is considered, the inconclusiveness of that history requires the same result. Lastly, this Court may consider the rulings and opinions of the Solicitor of the Department of the Interior and Comptroller General earlier referred to, even though such consideration is not necessary due to the fact that the statute is unambiguous, *Shea* v. *Vialpando*, 416 U.S. 251, 262, 40 L. Ed. 2d. 120, 130, (1974). Nevertheless, if this Court entertains any doubt as to the interpretation of 16 U.S.C. § 715s, as amended in 1964, irrespective of its plain meaning, the rulings and opinions of the Solicitor of the Department of the Interior and of the Comptroller General constitute informed judgments to which the Court may look for guidance, *Maritime Board* v. *Isbrandtsen Co.*, 356 U.S. 481, 499, 2 L. Ed. 2d. 926, 938, (1958). Once considered, those opinions should not be overruled except for weighty reasons, *United States* v. *Atlantic Refining Co.*, 360 U.S. 19, 24, 3 L. Ed. 2d. 1054, 1057, (1959).

In this case both the Solicitor of the Department of the Interior and the Comptroller General in well reasoned

opinions interpreted 16 U.S.C. § 715s, as amended in 1964, so as to require distributions from reserved land refuges, including the Kenai National Moose Range according to its terms. Those opinions, so considered, are consistent with the plain meaning of the Statute.

CONCLUSION

Based on the foregoing, the Judgment of the Court of Appeals for the Ninth Circuit should be reversed and the matter remanded to the District Court with instructions to grant the Motion of the Kenai Peninsula Borough for partial summary judgment.

DATED this 19 day of November, 1980, at Anchorage, Alaska.

CRANSTON, WALTERS & DAHL
Attorneys for Kenai Peninsula Borough

By: /s/ Charles K. Cranston
CHARLES K. CRANSTON